

Small Business Administration

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AUTHORITY: 15 U.S.C. 634(b); 31 U.S.C. 3803(g)(2).

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OVERVIEW AND DEFINITIONS

§ 142.1 Overview of regulations.

(a) *Statutory basis.* This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-3812 ("the Act"). The Act provides SBA and other federal agencies with an administrative remedy to impose civil penalties and assessments against persons making false claims and statements. The Act also provides due process protections to all persons who are subject to administrative proceedings under this part.

(b) *Possible remedies for program fraud.* In addition to any other penalty which may be prescribed by law, a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than \$5,000 for each statement or claim, regardless of whether property, services, or money is actually delivered or paid by SBA. If SBA has made any payment, transferred property, or provided services in reliance on a false claim, the person submitting it is also subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained by SBA because of the false claim.

§ 142.2 What kind of conduct will result in program fraud enforcement?

(a) Any person who makes, or causes to be made, a false, fictitious, or fraudulent claim or written statement to SBA is subject to program fraud en-

forcement. A "person" means any individual, partnership, corporation, association, or other legal entity.

(b) If more than one person makes a false claim or statement, each person is liable for a civil penalty. If more than one person makes a false claim which has induced SBA to make payment, an assessment is imposed against each person. The liability of each such person to pay the assessment is joint and several, that is, each is responsible for the entire amount.

(c) No proof of specific intent to defraud is required to establish liability under this part.

§ 142.3 What is a claim?

(a) Claim means any request, demand, or submission:

(1) Made to SBA for property, services, or money;

(2) Made to a recipient of property, services, or money from SBA or to a party to a contract with SBA for property or services, or for the payment of money. This provision applies only when the claim is related to the property, services or money from SBA or to the contract with SBA; or

(3) Made to SBA which decreases an obligation to pay or account for property, services, or money.

(b) A claim can relate to grants, loans, insurance, or other benefits, and includes SBA guaranteed loans made by participating lenders. A claim is made when it is received by SBA, an agent, fiscal intermediary, or other entity acting for SBA, or when it is received by the recipient of property, services, or money, or the party to the contract.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

§ 142.4 What is a statement?

A "statement" means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or with respect to a contract, bid or proposal for a contract, grant, loan or other benefit from SBA. "From SBA" means that SBA provides some portion of the money or

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property in connection with the contract, bid, grant, loan, or benefit, or is potentially liable to another party for some portion of the money or property under such contract, bid, grant, loan, or benefit. A statement is made, presented, or submitted to SBA when it is received by SBA or an agent, fiscal intermediary, or other entity acting for SBA.

§ 142.5 What is a false claim or statement?

(a) A claim submitted to SBA is a “false” claim if the person making the claim, or causing the claim to be made, knows or has reason to know that the claim:

- (1) Is false, fictitious or fraudulent;
- (2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;
- (3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or
- (4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) A statement submitted to SBA is a false statement if the person making the statement, or causing the statement to be made, knows or has reason to know that the statement:

- (1) Asserts a material fact which is false, fictitious, or fraudulent; or
- (2) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement. In addition, the statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

§ 142.6 What does the phrase “know or have reason to know” mean?

A person knows or has reason to know (that a claim or statement is false) if the person:

- (a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent; or

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(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

PROCEDURES LEADING TO ISSUANCE OF A COMPLAINT

§ 142.7 Who investigates program fraud?

The Inspector General, or his designee, is responsible for investigating allegations that a false claim or statement has been made. In this regard, the Inspector General has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978 (5 U.S.C. App. 3), as amended, to issue administrative subpoenas for the production of records and documents. The methods for serving a subpoena are set forth in part 101 of this chapter.

§ 142.8 What happens if program fraud is suspected?

(a) If the investigating official concludes that an action under this part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his designee. If the reviewing official determines that the report provides adequate evidence that a person submitted a false claim or statement, the reviewing official transmits to the Attorney General written notice of an intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include the reviewing official’s statements concerning:

- (1) The reasons for the referral;
- (2) The claims or statements upon which liability would be based;
- (3) The evidence that supports liability;
- (4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;
- (5) Any exculpatory or mitigating circumstances that may relate to the